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2013 IL App (4th) 120767-U

NO. 4-12-0767

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 25, 2013

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
THOMAS CLEMENT,)	No. 11CF892
Defendant-Appellant.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) affirmed defendant's convictions for burglary and theft, and (2) remanded to the trial court with directions to (a) allow defendant to apply his presentence credit against his \$5 Children's Advocacy Center fine and (b) reduce defendant's Violent Crime Victims Assistance Fund fine from \$20 to \$4.

¶ 2 Following a May 2012 bench trial, the trial court convicted defendant of burglary (720 ILCS 5/19-1(a) (West 2010)) and theft (720 ILCS 5/16-1(a)(1) (West 2010)). In September 2012, the court sentenced defendant to concurrent prison terms of six years for burglary and five years for theft.

¶ 3 Defendant appeals, arguing that (1) the State failed to present sufficient evidence to sustain his convictions, (2) he is entitled to apply his presentence credit against his \$5 Children's Advocacy Center (CAC) fine, and (3) his Violent Crime Victims Assistance Fund

(VCVA) fine should be reduced from \$20 to \$4. We affirm as modified and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In October 2011, the State charged defendant, Thomas Clement, with burglary (720 ILCS 5/19-1(a) (West 2010)) and theft (720 ILCS 5/16-1(a)(1) (West 2010)). In May 2012, the State presented the following evidence at defendant's bench trial.

¶ 6 Steve Swartz testified that he owned property at 4735 Industrial Drive in Springfield, Illinois, on which was located a 4,000 square foot warehouse, two construction trailers, and several vehicles. The State admitted into evidence a photograph showing that, in relation to the road, the construction trailers were parked side by side at the far back corner of the property. Two "no trespassing" signs stood at the front of the property near the road. At approximately 5:30 p.m. on September 19, 2011, Swartz went to the property and discovered that the south construction trailer had been broken into and materials were missing from inside. When Swartz was at the property earlier that day at 9:45 a.m., he had not noticed anything damaged or missing.

¶ 7 Swartz testified that "a large bundle of stainless steel trim for numerous antique vehicles, approximately 60 to 75 pieces, and a radiator" were missing from the south construction trailer. He estimated the cost of those items at between \$1,000 and \$1,500. According to Swartz, the stainless steel was "very light weight" and could be carried by a single individual. (Swartz gave no testimony regarding the physical characteristics of the radiator.)

¶ 8 When Swartz arrived at the property on the evening of September 19, a panel on the garage-style door at the end of the construction trailer had been "kicked in" and was lying

inside the trailer. The trial court admitted into evidence a photograph showing the door after Swartz had replaced the panel. Swartz testified that he had secured the door of the construction trailer prior to the break-in. Specifically, he affixed a "C-clamp" and a wood clamp to the rails of the garage-style door on the inside of the trailer. Those clamps would prevent the rollers from gliding through the rails if someone attempted to lift open the door from the outside. He estimated that it would take a person "less than a minute" to "undo that system." Swartz opined that whoever kicked in the panel had then climbed through that hole, removed the clamps from the rails, and then lifted the door open.

¶ 9 Swartz testified that, prior to September 19, he installed two heat-and-motion-activated security cameras on the property. Swartz installed those cameras—what he called "trail cameras"—in an area of the property behind the construction trailers where previous thefts had occurred. The cameras were positioned at the back ends of trailers, facing toward each other and oriented perpendicularly to the length of the trailers. Swartz explained that the cameras recorded only when they detected both motion and heat, and they recorded at a rate of one image every 10 seconds. When the cameras recorded images, the images were stored as digital files on secure digital (SD) cards contained within the cameras.

¶ 10 After Swartz discovered the break-in on September 19, he removed the SD cards from both cameras and downloaded six images from the SD cards onto his personal computer: four from the south-facing camera and two from the north-facing camera. Swartz testified that these were the only images captured by the cameras between 9:45 a.m. and 5:45 p.m. on September 19. Each image was imprinted with a time stamp. Swartz testified that he checked the accuracy of the time stamps on September 19 and found that they were "within five minutes"

of his "cellphone time." Swartz used his personal email account to send the six images to the Springfield police department. The trial court admitted those images into evidence.

¶ 11 Sergeant Douglas Cookson and Detective Don Larson, both of whom had previous interactions with defendant, testified that defendant was pictured in the six images captured by Swartz's cameras. Swartz testified that he had never seen or met defendant. Each image showed defendant standing near the back of the construction trailers. Two of the images showed defendant peering into vehicles parked near the construction trailers. One of the images showed defendant with his hand on what Swartz identified as the door handle of the north construction trailer (the north trailer was not broken into). As to the south trailer, the cameras were positioned perpendicularly to the trailer at an angle that caused the lip of the door frame to block the view of the door and, thus, make it impossible to conclusively determine from the images whether and when the door was opened or closed. None of the images showed defendant in possession of any stolen property.

¶ 12 Two of the images were time-stamped 5:27 p.m. and four were time-stamped 5:29 p.m. (the time stamps did not display a "seconds" value). Swartz testified that the lack of images captured between 5:27 and 5:29 indicated that defendant was not in front of the cameras during that time. On cross-examination, Swartz testified, as follows:

"Q. Sir, why is it that we do not have any depictions of this person removing that property from your property?

A. I don't know. It probably happened very quickly is the only thing I can surmise, and the material was removed in between photos.

Q. Sir, with what speed does your apparatus take photos?

A. Approximately 10 seconds.

Q. So the fact of the matter is the only way that perhaps that individual would not have been reduced to a photo in possession of that property is if he or she had the ability to go into the trailer and remove all that property within 10 seconds?

A. Yes."

On re-direct, however, Swartz testified that the cameras would not record when someone was inside of the construction trailer because no heat or motion would be detectable.

¶ 13 Swartz testified that he last took inventory of the construction trailer two weeks prior to September 19, following a previous theft, and he had not inventoried the stainless steel automobile trim or the radiator since that time. In the two images captured by the north-facing camera, Swartz identified a styrofoam "wrapping blanket" lying on the ground outside of the construction trailer. He testified that the wrapping blanket was secured inside the trailer when he last saw the trailer, which would have been at 9:45 a.m. on September 19.

¶ 14 Defendant did not present evidence.

¶ 15 Following the presentation of evidence and argument, the trial court found defendant guilty of burglary and theft. In August 2012, the court denied defendant's motion for a new trial. In September 2012, the court sentenced defendant to concurrent terms of six years' imprisonment for burglary and five years' imprisonment for theft. The court also directed the circuit clerk to assess a \$5 CAC fine and a \$20 VCVA fine.

¶ 16 This appeal followed.

¶ 17

II. ANALYSIS

¶ 18 On appeal, defendant argues that (1) the State failed to present sufficient evidence to sustain his convictions, (2) he is entitled to apply his presentence credit against his \$5 CAC fine, and (3) his VCVA fine should be reduced from \$20 to \$4.

¶ 19

A. The State Presented Sufficient Evidence To Sustain Defendant's Convictions

¶ 20

1. *Standard of Review*

¶ 21 When presented with a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)). "Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Bush*, 214 Ill. 2d 318, 326, 827 N.E.2d 455, 460 (2005). This standard applies in all criminal cases, regardless of the nature of the evidence. *Id.* Just as with direct evidence, where the trial court's verdict is based upon circumstantial evidence, we will affirm the conviction if the evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged. *People v. Gomez*, 215 Ill. App. 3d 208, 216, 574 N.E.2d 822, 827 (1991).

¶ 22

2. *The State's Evidence*

¶ 23 Initially, we note that defendant does not dispute that he was the man captured on Swartz's cameras on September 19, 2011.

¶ 24

Although defendant disputes the State's contention that one of the images showed

him holding the door handle of one of the construction trailers, our standard of review counsels us to resolve that factual dispute in favor of the State. *Bush*, 214 Ill. 2d at 326, 827 N.E.2d at 460. From this evidence, the trial court could have reasonably inferred that defendant had the intent to access the construction trailers. The images that showed defendant peering into the cars on the property could have also supported the reasonable inference that he was intent on committing a theft of property. Moreover, defendant's willingness to pass the "no trespassing" signs and venture to the construction trailers at the far end of Swartz's property demonstrates that he had an unlawful purpose for being on the property.

¶ 25 Swartz testified that when he visited the property at 9:45 a.m. earlier that day, he noticed nothing damaged or missing. It could be reasonably inferred from that testimony that the burglary and theft must have happened between 9:45 a.m. and the time Swartz returned to the property at approximately 5:30 p.m. Swartz testified that the six images showing defendant were the only images that the cameras captured during that period of time. Because the cameras were designed to record whenever they detected motion and heat, the fact that they did not record at any other time between 9:45 a.m. and 5:30 p.m. indicates that no other person accessed the back of the trailers during the time period when the burglary and theft must have occurred.

¶ 26 As the trial court noted when announcing its verdict, the absence of any images of defendant in possession of the stainless steel automobile trim or the radiator can be explained by (1) the 10-second lapse between images and (2) the fact that the cameras only recorded when they detected heat and motion. The cameras would not have captured any images while defendant was inside of the construction trailer—because no motion or heat would be detectable—and defendant could have easily carried the metal outside of the camera's view

within 10 seconds of exiting the trailer. Defendant could have also tossed the property out of the trailer onto the ground before exiting the trailer and carrying the property away. Because the stainless steel automobile trim and the radiator did not carry heat signatures, the motion of those objects alone would not have triggered the cameras to record.

¶ 27 We note that, although the time stamps on the images placed defendant behind the construction trailers at 5:29 p.m., Swartz testified that (1) the time stamps from the cameras were accurate to "within five minutes" of the time displayed on his cellular phone (whatever time that may have been) and (2) he arrived at the property at "approximately" 5:30 p.m. Construing this evidence in the light most favorable to the State, defendant could have had over six minutes to take the property and leave the scene before Swartz arrived. This would explain why Swartz did not notice defendant when he arrived at the property on the evening of September 19.

¶ 28 Viewing all the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to allow the experienced trial court to find defendant guilty of burglary and theft beyond a reasonable doubt.

¶ 29 B. Defendant's CAC Fine and VCVA Assessment

¶ 30 Defendant argues that (1) he is entitled to apply his presentence credit against his \$5 CAC fine and (2) his VCVA fine should be reduced from \$20 to \$4. The State concedes these points, and we accept the State's concessions.

¶ 31 Pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/110-14(a) (West 2010)), defendant is entitled to a statutory \$5-per-day credit against creditable fines for time spent in presentence custody. "Such credit may only be applied to offset eligible fines, not fees." *People v. Vlahon*, 2012 IL App (4th) 110229, ¶ 33, 977 N.E.2d

327. The CAC assessment is such a fine. *People v. Folks*, 406 Ill. App. 3d 300, 305, 943 N.E.2d 1128, 1132 (2010). The trial court credited defendant with 295 days for time served. Defendant is entitled to \$5 credit against his \$5 CAC fine.

¶ 32 The VCVA fine (725 ILCS 240/10(b) (West 2010)) should be reduced to \$4 because another fine was imposed. Pursuant to section 10(b) of the VCVA, the VCVA fine is \$4 for each \$40, or fraction thereof, of fine imposed. 725 ILCS 240/10(b) (West 2010); *Vlahon*, 2012 IL App (4th) 110229, ¶ 37, 977 N.E.2d 327. Pursuant to section 10(c) of the VCVA, a \$20 VCVA fine is improper where another fine is imposed. 725 ILCS 240/10(c) (West 2010); see *People v. Jake*, 2011 IL App (4th) 090779, ¶¶ 32, 34, 960 N.E.2d 45 (modifying \$25 VCVA fine to \$4 where other fine was imposed); *People v. Childs*, 407 Ill. App. 3d 1123, 1134, 948 N.E.2d 105, 114 (2011) (modifying \$20 VCVA fine where other fines were imposed). Defendant's VCVA fine should be reduced to \$4.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm defendant's convictions and remand with directions that the trial court instruct the circuit clerk to adjust defendant's fines accordingly. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed as modified and remanded with directions.